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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,033	04/29/2005	Pekka Kangasniemi	PLA078-820708	2853
21831	7590	07/07/2008	EXAMINER	
WOLF BLOCK SCHORR AND SOLIS-COHEN LLP			WILSON, JOHN J	
250 PARK AVENUE			ART UNIT	PAPER NUMBER
NEW YORK, NY 10177			3732	
NOTIFICATION DATE		DELIVERY MODE		
07/07/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO@WOLFBLOCK.COM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/517,033	KANGASNIEMI, PEKKA	
	<b>Examiner</b>	<b>Art Unit</b>	
	John J. Wilson	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 28 April 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 13-27 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 13-27 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 13-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (4321040) in view of Zdarsky (5516287). Miller shows a root canal instrument 10, needle part 13, a gripping member 12 having a substantially continuous outer surface as shown, which can be gripped by the fingers, and is recoverably deformable, Fig. 14. Miller teaches using the material nylon, which generally does not have a coefficient of friction greater than .4. Zdarsky teaches using a silicon rubber surface 4 for gripping and for the purpose of providing for high grippability, column 2, lines 6-14. It is held that the silicon rubber used, in view of the purpose for use, inherently has a high coefficient of friction and obviously has a coefficient of friction greater than .4. It would be obvious to one of ordinary skill in the art to modify Miller to include the use of a gripping material as taught by Zdarsky in order to improve the grippability. The specific range of the coefficient of friction of the material used is an obvious matter of choice in the degree of a known parameter to achieve a predictable result to one of ordinary skill in the art. Miller does not specifically state the material of

the needle. It is well known to make endodontic needles from a metallic material. It would be obvious to one of ordinary skill in the art to use a metallic needle as is well known in the art. Miller does not disclose the ranges of the Shore hardness of the materials used, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the root canal instrument within the specifically claimed ranges of shore hardness, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claims 13-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al (6206695) in view of Fischer et al (6042378). Wong shows a root canal instrument, metal needle part, Figs. 1, 2a and column 10, lines 41-46, a gripping member 32, 37 having a substantially continuous outer surface as shown, which can be gripped by the fingers. Wong does not show the claimed coefficient of friction or recoverably deformable. Fischer teaches that it is known in the prior art that a smooth handle surface avoids microbial ingrowth, however, is also slippery, and that a prior art solution to this problem is to use a rubber surface, column 1, line 63 through column 2, line 5. It is held that the rubber used, in view of the purpose for use, inherently has a high coefficient of friction and obviously has a coefficient of friction greater than .4. It would be obvious to one of ordinary skill in the art to modify Wong to include the use of a gripping material as taught by Fischer in order to improve the grippability. The specific range of the coefficient of friction of the material used is an obvious matter of

choice in the degree of a known parameter to achieve a predictable result to one of ordinary skill in the art. The shown art does not disclose the ranges of the Shore hardness of the materials used, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the root canal instrument within the specifically claimed ranges of shore hardness, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

### ***Response to Arguments***

Applicant's arguments filed April 28, 2008 have been fully considered but they are not persuasive. Applicant argues that Miller is not continuous because it has ribs stating that continuous outer surface has been defined in the specification as having no corners creating point like pressure, however, it is noted that the term continuous has not specifically been defined in the manner stated, instead, the specification defines continuous and smooth. It is held that, in view of the normal meaning of the term continuous, Miller shows a continuous outer surface and the rejection has been repeated above. In view of this difference in the interpretation of the language used, a second rejection has been applied above where the interpretation of an outer surface that is continuous and smooth has been addressed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722. The examiner can normally be reached on Maxi-Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/John J Wilson/  
Primary Examiner  
Art Unit 3732**

Jw  
June 30, 2008